

United States District Court
Northern District of California

FREDERICK RENEE GATES,
Plaintiff,
v.
ROBERT NEUSCHNID,
Defendant.

Case No. 19-cv-07780-RMI

ORDER TO SHOW CAUSE

Petitioner, a California prisoner, filed a *pro se* petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. The original petition was dismissed with leave to amend, and petitioner has filed an amended petition.

BACKGROUND

Petitioner was convicted of first-degree robbery and felony domestic violence. Am. Pet. (Dkt. 7) at 2. He was sentenced to 13 years in state prison. *Id.* at 1. The California Court of Appeal affirmed the judgment, and the California Supreme Court denied review. *Id.* at 3.

DISCUSSION

Standard of Review

This court may entertain a petition for writ of habeas corpus “in behalf of a person in custody pursuant to the judgment of a State court only on the ground that he is in custody in violation of the Constitution or laws or treaties of the United States.” 28 U.S.C. § 2254(a); *Rose v. Hedges*, 423 U.S. 19, 21 (1975). Habeas corpus petitions must meet heightened pleading requirements. *McFarland v. Scott*, 512 U.S. 849, 856 (1994). An application for a federal writ of habeas corpus filed by a prisoner who is in state custody pursuant to a judgment of a state court

1 must “specify all the grounds for relief available to the petitioner . . . [and] state the facts
2 supporting each ground.” Rule 2(c) of the Rules Governing § 2254 Cases, 28 U.S.C. foll. § 2254.
3 “[N]otice’ pleading is not sufficient, for the petition is expected to state facts that point to a ‘real
4 possibility of constitutional error.’” Rule 4 Advisory Committee Notes (quoting *Aubut v. Maine*,
5 431 F.2d 688, 689 (1st Cir. 1970)).

6 **Legal Claims**

7 For federal habeas relief asserts that: (1) he received ineffective assistance of counsel for
8 his attorney’s failure to challenge the admissibility of certain evidence; (2) the trial court erred in
9 admitting evidence of prior bad acts; (3) California Evidence Code section 1109 is
10 unconstitutional on its face; and (3) false evidence was introduced at trial. Liberally construed,
11 these claims are sufficient to require a response.

12 **CONCLUSION**

13 The clerk shall serve by electronic mail a copy of this order, and a Magistrate Judge
14 Jurisdiction form on the Attorney General of the State of California at
15 **SFAWTParalegals@doj.ca.gov**. The clerk also shall serve a copy of this order on Petitioner.
16 Respondent can view the petition on the electronic docket (dkt. 7).

17 Respondent shall file with the court and serve on Petitioner, within eighty-four (84) days of
18 the issuance of this order, an answer conforming in all respects to Rule 5 of the Rules Governing
19 Section 2254 Cases, showing cause why a writ of habeas corpus should not be granted.
20 Respondent shall file with the answer, and serve on Petitioner, a copy of all portions of the state
21 trial record that have been transcribed previously and that are relevant to a determination of the
22 issues presented by the petition.

23 If Petitioner wishes to respond to the answer, he shall do so by filing a traverse with the
24 court and serving it on respondent within twenty-eight (28) days of his receipt of the answer.

25 Respondent may file a motion to dismiss on procedural grounds in lieu of an answer, as set
26 forth in the Advisory Committee Notes to Rule 4 of the Rules Governing Section 2254 Cases. If
27 respondent files such a motion, it is due eighty-four (84) days from the date this order is entered. If
28 a motion is filed, Petitioner shall file with the court and serve on Respondent an opposition or

1 statement of non-opposition within twenty-eight (28) days of receipt of the motion, and
2 Respondent shall file with the court and serve on Petitioner a reply within twenty-eight (28) days
3 of receipt of any opposition.

4 Petitioner is reminded that all communications with the court must be served on
5 Respondent by mailing a true copy of the document to Respondent's counsel. Petitioner must keep
6 the court informed of any change of address and must comply with the court's orders in a timely
7 fashion. Failure to do so may result in the dismissal of this action for failure to prosecute pursuant
8 to Federal Rule of Civil Procedure 41(b). *See Martinez v. Johnson*, 104 F.3d 769, 772 (5th Cir.
9 1997) (Rule 41(b) applicable in habeas cases).

10 **IT IS SO ORDERED.**

11 Dated: April 17, 2020

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ROBERT M. ILLMAN
United States Magistrate Judge